

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA }
v. } } Criminal Case No.:
JACK ROSGA, ET AL } } 3:10 CR 170

April 8, 2011

COMPLETE TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE HENRY E. HUDSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

Dennis Fitzpatrick, Esquire
Peter S. Duffey, Esquire
OFFICE OF THE UNITED STATES ATTORNEY
Counsel on behalf of the United States

Claire G. Cardwell, Esquire
Craig A. Mastantuono, Esquire
Counsel on behalf of Jack Rosga

KRISTA M. LISCIO, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 (The proceeding commenced at 9:32 a.m.)

2 THE COURT: Good morning.

3 MR. DUFFEY: Good morning.

4 MR. FITZPATRICK: Good morning, Judge.

5 MS. CARDWELL: Good morning, Your Honor.

6 THE COURT: All right, call our first case this
7 morning, Ms. Pizzini.

8 THE CLERK: Case Number 10 CR 170. *United States*
9 *of America v. Jack Rosga.*

10 Mr. Dennis Fitzpatrick and Mr. Peter S. Duffey
11 represent the United States.

12 Ms. Claire G. Cardwell and Mr. Craig A.
13 Mastantuono represent the defendant.

14 Are counsel ready to proceed?

15 MR. FITZPATRICK: Yes, Your Honor.

16 MS. CARDWELL: Ready for Mr. Rosga, Your Honor.

17 THE COURT: The matter is before the Court this
18 morning for sentencing.

19 Ms. Cardwell, have you received a copy of the
20 presentence report, and a copy of the officer's
21 computation of the Guidelines?

22 MS. CARDWELL: Yes, sir, we have.

23 THE COURT: And have you had ample opportunity to
24 go over both of those with your client?

25 MS. CARDWELL: Yes, sir, we have.

1 THE COURT: Are there any objections or
2 corrections you want to make to the text of the report?
3 I realize there are guideline issues. I'll handle
4 those separately.

5 MS. CARDWELL: Not to the text of the report. No,
6 sir.

7 THE COURT: All right.

8 Mr. Fitzpatrick, any issues concerns the report
9 itself?

10 MR. FITZPATRICK: No, Your Honor.

11 THE COURT: All right. The report will be ordered
12 filed, made a part of the record in the case, and this
13 Court will adopt the officer's factual findings and
14 conclusions.

15 Turning to the Guidelines in this case, the
16 officer determined that this defendant has a Total
17 Offense Level of 41; he's in Criminal History Category
18 I. On Count 1, that yields a restricted range of 240
19 months. And on Count 2, also a restricted range of 34
20 months.

21 Now you believe, Ms. Cardwell, that the Guidelines
22 are improperly calculated, is that right, ma'am?

23 MS. CARDWELL: That's correct. As we noted in our
24 sentencing memo.

25 THE COURT: All right. I'll hear from you now.

1 Go right ahead.

2 MS. CARDWELL: Thank you, Your Honor.

3 THE COURT: And you believe the Guidelines have
4 been properly calculated, is that right,

5 Mr. Fitzpatrick?

6 MR. FITZPATRICK: That's correct, Your Honor.

7 THE COURT: Okay.

8 Go right ahead, Ms. Cardwell.

9 MS. CARDWELL: Your Honor, the government has
10 noted, and I assume that the probation officer has
11 taken the position, that when a person is acquitted or
12 when a jury finds that there's sufficient evidence to
13 find an overt act, that is not in any way binding on
14 the Court in terms of whether the Court may find --

15 THE COURT: I think not only the probation
16 officer, I think the U.S. Supreme Court and the Fourth
17 Circuit have pretty clearly said that.

18 MS. CARDWELL: I'm conceding, Your Honor, that
19 that's the case.

20 THE COURT: Okay. That's fine.

21 MS. CARDWELL: And even -- my point is that even
22 under a lower burden of proof, a preponderance of the
23 evidence, there must be evidence to support it which is
24 reliable, believable, and worthy of the trust of this
25 Court.

1 This is my 26th year of practicing criminal law.
2 And as the Court knows, I've been on both sides of the
3 courtroom, and I've argued the standard of beyond a
4 reasonable doubt - and I don't mean to be so personal
5 in my comments - but on both sides, and on a weekly
6 basis. And it occurred to me last night that because
7 of --

8 THE COURT: Well, I think you know in this case as
9 I understand it drawing on *Perry* and *Montgomery*, you're
10 urging me to adopt a clear and convincing standard
11 because of the amount of elevation of guideline range
12 based upon this particular enhancement, is that right?

13 MS. CARDWELL: That's true. But my point at this
14 moment, Your Honor, is that assuming the Court follows
15 the preponderance of the evidence standard, as the case
16 law possibly directs you to do in the Fourth Circuit,
17 even under that standard my point is that the evidence
18 must be reliable. And my point in discussing proof
19 beyond a reasonable doubt in that standard, and in fact
20 as a criminal lawyer it's what I'm used to, it occurred
21 to me last night that the standard of preponderance of
22 the evidence is -- is not really an unimportant
23 standard.

24 And by that I mean it occurred to me, and my
25 co-counsel and I talked about this, it's the standard

1 in all civil cases. It's the standard that this Court
2 applies in civil cases. It's the standard that a
3 doctor who is sued by one of his patients depends upon
4 for the Court to reach a just verdict. It's the
5 standard that a young driver who may have no insurance
6 but has a college savings account depends upon for a
7 just verdict. It may be a lower burden of proof, but
8 it's a very important burden of proof.

9 In thinking about the difference in civil and
10 criminal cases, I thought about the age of Mr. Rosga.
11 He's 54 years old. I'm 53. And I thought about what
12 -- how you put a monetary value on the next 10, 20, 23
13 years of a person's life. For me it would be at least
14 \$100 million. At least. In a \$100 million civil suit,
15 would the word of the likes of Michael Pedini, even
16 with some circumstantial evidence to support him, be
17 enough to award that verdict?

18 Mr. Fitzpatrick in his response on behalf of the
19 government indicated that we had asserted in our
20 position that Mr. Pedini was uncorroborated. That's
21 not exactly what we said. What we said in our memo was
22 that there was no direct evidence supporting it. And
23 what we meant by that was there were no witnesses to
24 this alleged direction, or instruction, or order that
25 he claimed to have received from Mr. Rosga to do the

1 shooting.

2 THE COURT: But does the law require that? As I
3 read the law governing this particular enhancement, all
4 that needs to be demonstrated is that the act of
5 violence, the attempted murder, was done in connection
6 with the unlawful enterprise, and that it was
7 reasonably foreseeable. That is all that's necessary.
8 It's a low threshold to trigger this enhancement.

9 MS. CARDWELL: Yes, sir. But I'm not talking so
10 much about the level of the threshold, but the quality
11 of the evidence for this Court to evaluate.

12 THE COURT: Okay. All right. Go right ahead.

13 MS. CARDWELL: Without any corroboration of a
14 person like Michael Pedini -- well, there are
15 corroborating circumstances. There's no question about
16 that. One of them that is offered as such a strong
17 corroborating circumstance is the fact that Mr. Rosga
18 and Mr. Pedini happened to attend one of the national
19 club functions. And that's offered as a very strong
20 corroborating circumstance. He was there at the same
21 place.

22 What's lacking in the evidence is any indication
23 that anyone ever saw them together. It's not out
24 standing that he was there for a short period of time,
25 or traveled many miles to get there. That's what these

1 club members do. They ride bikes, they ride across the
2 country. They sometimes stay for one night with their
3 brothers. And to make that a corroborating
4 circumstance that this order came down, and to support
5 a guy like Michael Pedini with that circumstance, is
6 not very persuasive.

7 Certainly no one heard Mr. Rosga give the
8 instructions, not even Mr. Benvie who was recorded
9 commenting on it. And what really was revealed in the
10 evidence is that his entire source that that had
11 happened was Mr. Pedini himself. So it all goes back
12 to the credibility of this one individual.

13 Mr. Pedini is the guy who told two sets of 12
14 citizens that he was ordered to do this shooting, and
15 apparently was not believed. The government argues
16 take his word for it and impose 23 years, or something
17 worth \$100 million, on the word of this character - a
18 drug dealer, a guy who also claimed to have been
19 affiliated with the Hells Angels, as well as the
20 Outlaws. A guy who claimed that he was a chapter, a
21 regional, and a national enforcer all at the same time.

22 This was testimony that was entirely inconsistent
23 with the hierarchy experience as described by the
24 undercover agents in this case. And he was not
25 corroborated by any witness, including the agents who

1 offered extremely detailed descriptions of the culture
2 and organization of the Outlaws. But we don't have to
3 stop there.

4 Mr. Pedini claimed that he was a specially
5 assigned enforcer who was assigned to protect
6 Mr. Rosga. He failed to explain why he'd be selected
7 for that role, or how he would be expected to fill that
8 role while Mr. Rosga resided in Milwaukee and he
9 resided in Maine.

10 He also failed to explain why a relatively new
11 member like him, I think it was under two years, would
12 be given such a special top secret assignment by the
13 president of the association. In fact, he told 24
14 citizens in two juries who heard his claim that he was
15 "*World famous in the 1%er world.*"

16 He told the juries that he purposely tried to jam
17 his revolver. He used -- the one that he used to shoot
18 Mr. Watson, and that he aimed high so that the fatal
19 bullet would be from Thomas Mayne's gun and not his.
20 He told -- and neither jury bought Mr. Pedini's game
21 because basically I think they recognized that he does
22 aim high. He claims that he's doing the bosses'
23 special assignments when he's desperately trying to
24 impress those around him. He aims high when he's
25 confronted with his own acts and tries to buy his way

1 out of 23 years.

2 The sad irony is that in light of the government's
3 acceptance of Mr. Pedini's game, and the sentence that
4 Mr. Pedini received for almost killing a man, it seems
5 like Madman had a pretty good aim. He got the
6 notoriety he so desperately sought, and he only had to
7 do a little over five years for it.

8 Even under a lower standard to prove the evidence,
9 the government needs to meet that burden with reliable
10 and trustworthy evidence. When you're talking about
11 raising the potential sentence by double-digits,
12 there's no case where the Court should be more diligent
13 in holding the government to that burden. It's frankly
14 difficult to believe that this Court, and I say this
15 with respect, could find that Michael Pedini
16 sufficiently meets that burden.

17 I'd like to -- I'm sorry. The rest of my argument
18 has to do with sentencing, Your Honor. That would be
19 my argument as to the cross-reference.

20 THE COURT: All right. Thank you very much,
21 Ms. Cardwell.

22 Mr. Fitzpatrick.

23 MR. FITZPATRICK: Thank you.

24 THE COURT: Let me say for the record, I have
25 reviewed the memoranda filled by both sides.

1 MR. FITZPATRICK: Thank you, Your Honor. And I'll
2 make my argument very brief.

3 Your Honor, I would like to point out to you some
4 evidence that was elicited at the trial. Importantly,
5 Your Honor, when we go to the issue of in furtherance
6 of, or more importantly, reasonable foreseeability,
7 what could this defendant think was going to happen
8 within his organization he's at the top of? And it's
9 not -- it's an organization that has, I think the
10 evidence was, at least 500, certainly no more than
11 1,000, people. Ms. Cardwell is correct, it's a
12 hierachal structure, but it's hierachal in a way in
13 which information flows very well. That was the
14 evidence in the case. He knows what's going on within
15 his organization.

16 One piece of evidence, and we had over 600 pieces
17 of evidence in this case, is Government's Exhibit 269.
18 I'd just like to draw it to the Court's attention, if I
19 could. I apologize, Your Honor, I was incorrect. It's
20 Government's Exhibit 289.

21 This was seized on June 15, 2010. It was above
22 Mr. Rosga's bed in his bedroom in the Milwaukee
23 clubhouse. It depicts a bloody battle between the
24 Outlaws and the Hells Angels. And, Your Honor, if the
25 Court wishes, I can hand it up and you can take a look

1 at it.

2 THE COURT: That's okay, Mr. Fitzpatrick. I've
3 seen it.

4 MR. FITZPATRICK: Thank you, sir. In the middle
5 of the picture, there's an Outlaw member that has
6 "Outlaws" on the front of his t-shirt. He's firing a
7 gun across the way, strikes a Hells Angels' member.
8 Right next to that person is another member wearing a
9 t-shirt, and it says, "Kill crazy." "Kill crazy." And
10 it depicts a shootout between the Outlaws and the Hells
11 Angels in Los Angeles at a place called the Double Moon
12 Bar.

13 It's absolutely foreseeable for this defendant,
14 based on that alone, that he knows that his people are
15 out there shooting at the Hells Angels. The picture
16 depicts someone that says, "Kill crazy."

17 Michael Madman Pedini, there doesn't come a time
18 when he's not characterized as Madman Pedini. That is
19 his nickname. It's his guy. It's absolutely his guy.

20 In our pleading, I characterized him as an
21 unsavory, mean, and violent person. It's because he
22 is. He also happens to be a member of an unsavory,
23 mean, and violent organization for which this man is
24 the top -- at the top.

25 So, Your Honor, based on that, I would argue to

1 the Court I don't know how we escape that. I don't
2 know how we escape that picture, and then all the other
3 evidence in the case, and find that it's not
4 foreseeable to him that shootings are going to occur.

5 On July 5, 2009, he said shoot. Three undercover
6 agents who were present with him for an entire day
7 testified that the defendant was promoting violence
8 against a rival gang. That's three months prior to the
9 shooting.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Fitzpatrick.

12 Do you have my rejoinder, Ms. Cardwell?

13 MS. CARDWELL: No, sir. Thank you.

14 THE COURT: All right. Very well.

15 Before the Court is the defendant's objections to
16 the U.S. probation officer's cross-reference to
17 attempted murder in calculating the Guideline for Count
18 1, a conspiracy to commit R.I.C.O. The United States
19 probation officer has relied upon two theories or bases
20 to apply the Guideline for attempted murder under U.S.
21 Sentencing Guideline 2A2.1.

22 First, U.S. Sentencing Guideline 2B3.2 pertains to
23 extortion by force, or threat of injury, or serious
24 damage provides for a cross-reference if the offense
25 was tantamount to attempted murder, and instructs to

1 apply Section 2A2.1, which is assault with the intent
2 to commit murder or attempted murder.

3 This Court finds as a matter of law that the
4 shooting of another individual with a firearm
5 deliberately constitutes attempted murder. Under
6 Section 2B3.2(c)(2), alternatively, this -- the
7 probation officer has also relied upon U.S. Sentencing
8 Guideline 1B1.3(a)(1)(B), which enables a base level
9 cross-reference to Chapter 2 which is where you find
10 the attempted murder enhancement.

11 *"In the case of a jointly undertaken criminal
12 activity,"* which they described as *"a criminal plan,
13 scheme, endeavor, or enterprise undertaken by the
14 defendant in concert with others, whether or not
15 charged as a conspiracy,"* Count 1 was such a criminal
16 charge of a criminal plan or a joint undertaking.

17 And it's further said that, *"all reasonably
18 foreseeable acts and omissions of the others in
19 furtherance of the jointly undertaken criminal
20 activity, that occurred during the commission of the
21 offense of conviction,"* that they are responsible for
22 those acts under U.S. Sentencing Guideline
23 1B1.3(a)(1)(B).

24 Moreover, Section 1B1.3(a)(3) specifically
25 provides that all harm that resulted from the acts and

1 omissions specified in U.S. Sentencing Guideline
2 1B1.3(a)(1)(B) are considered to be relevant conduct
3 for guideline purposes.

4 So under either theory, the probation officer
5 could, if the facts support it, apply the enhancement
6 for attempted murder under the legal framework of this
7 case.

8 Now, the defendant urges the Court to adopt a
9 clear and convincing standard in reviewing the
10 evidence. Now, neither the U.S. Supreme Court nor the
11 Fourth Circuit have specifically embraced this
12 standard, but it has been strongly suggested in cases
13 that where the adoption of relevant conduct or
14 cross-reference substantially increases the defendant's
15 potential sentence, and that's *United States v.*
16 *Moreland* and *United States v. Montgomery*, both Fourth
17 Circuit cases, the Fourth Circuit has urged out of an
18 abundance of caution that the Court employ a standard
19 of clear and convincing evidence. And given the
20 enhancement in this case, this Court will review the
21 evidence out of an abundance of caution under a clear
22 and convincing standard.

23 Now, the defendant's contention that the failure
24 of the jury to unanimously find beyond a reasonable
25 doubt that the attempted murder of Gary Watson was an

1 act of racketeering committed by the enterprise does
2 not preclude this Court from considering such act as
3 relevant conduct, or as a basis for cross-reference.
4 In *United States v. Montgomery*, the Fourth Circuit
5 joined guidance from *United States v. Watts* stated,
6 "The jury's acquittal of the defendant on the count of
7 the indictment charging murder does not prevent the
8 sentencing court from considering conduct underlying
9 the charged crime so long as such conduct has been
10 proved."

11 In *United States v. Perry*, the Fourth Circuit also
12 observed that the Supreme Court's decision in *United*
13 *States v. Booker* does not suggest that the
14 consideration of acquitted conduct violates the Sixth
15 Amendment as long as the judge does not impose a
16 sentence that exceeds that which is authorized by the
17 jury verdict.

18 Now, whether this Court relies upon a
19 cross-reference under U.S. Sentencing Guideline 2A2.1,
20 or relevant conduct under U.S. Sentencing Guideline
21 1B1.3(a)(1)(B), both of the analytical routes and the
22 result are the same. In determining their application,
23 the Court considers the following conduct:

24 During the two weeks of evidence heard by the
25 Court and the jury in this case, a dominant theme

1 conveyed by a clear majority of the witnesses was that
2 those chapters of the American Motorcycle Association
3 on trial cultivated and promoted a culture of violence,
4 robbery, and territorial control. Acts of retaliatory
5 violence were a common theme discussed among members in
6 the clubhouses.

7 The evidence demonstrated that shows of force and
8 territorial exclusion of rival clubs was more than mere
9 idle chatter. On numerous occasions, the evidence
10 disclosed that the Outlaws went hunting or sought out
11 rival clubs, often with firearms.

12 The evidence is undisputed that Jack Rosga became
13 the national president of the Outlaws in November of
14 2006. David Lowry, a longtime member of the Outlaws
15 and the copper region president, testified that
16 president Rosga controlled the Outlaws, and that others
17 took orders from him.

18 In June of 2007 when a member of the Outlaws was
19 assaulted by a member of the Renegades, Mr. Rosga,
20 according to the evidence, gave the green light to
21 retaliate and assault against the Renegades.

22 According to the testimony of Special Agent
23 Grabman of the Bureau of Alcohol, Tobacco, Firearms and
24 Explosives who infiltrated the Outlaws in an undercover
25 capacity on July 5, 2009, at the Petersburg clubhouse,

1 Rosga instructed Grabman, and other Outlaw members, to
2 shoot Hells Angels' members and support club members if
3 necessary. Mr. Rosga, gesturing with his finger in the
4 form of a pistol, said the best way to stop them is to
5 put a cap in them.

6 Rosga also told Special Agent Grabman that he knew
7 he was eventually going to go to jail for hostile
8 actions against rival club members.

9 In September of 2009, two members of the Florida
10 region of the Outlaws were assaulted by members of the
11 Hells Angels. Michael Pedini testified that he met
12 with Rosga at a national Outlaws' event in Arkansas on
13 September 27, 2009. Pedini testified that during his
14 conversation with Rosga, Rosga told him that he wanted,
15 Mr. Rosga wanted, two vests or a body. Pedini took
16 this to mean that Rosga had directed him to either
17 forcibly take two vests from members of the Hells
18 Angels or kill one.

19 And I might note parenthetically that this Court
20 receives and weighs Mr. Pedini's testimony with great
21 care and caution.

22 In a recorded conversation played in open court,
23 Thomas Benvie, president of the Maine chapter of the
24 Outlaws, told Special Agent Grabman that Mr. Rosga was
25 all over Pedini about the shooting in Connecticut -

1 that shooting being the one in which two Outlaws were
2 assaulted by members of the Hells Angels.

3 On October 5, 2009, at the Outlaws clubhouse in
4 Petersburg, Joseph Allman, a member of the Maine
5 chapter of the Outlaws, had a discussion with Special
6 Agent Grabman about the assault on two Outlaws by
7 members of the Hells Angels. Allman told Grabman he
8 was waiting for members of the Outlaws to finish taking
9 care of business, and that he was a very patient
10 person.

11 On October 8, 2009, Pedini, and another Outlaw
12 from Maine, shot Gary Watson, a member of the Hells
13 Angels at the Hells Angels' clubhouse in Maine. Watson
14 sustained a serious injury. This Court finds that that
15 act of shooting was a clearly premeditated act with the
16 intent to kill Watson.

17 On October 31, 2009, Michael Mariaca, president of
18 the Rock Hill, South Carolina chapter and regional
19 enforcer, mentioned during a conversation with an
20 undercover agent of the Bureau of Alcohol, Tobacco
21 Firearms and Explosives, that the national president of
22 the Outlaws had declared war on the Hells Angels.

23 Previously on October 3, 2009, at a meeting of the
24 copper region bosses, Les Werth also announced that
25 Rosga had declared war on the Hells Angels during the

1 national bosses' meeting. Special Agent Grabman was
2 present during that conversation.

3 David Lowry testified that on January 20, 2010, he
4 contacted Rosga to secure permission to deploy
5 additional Outlaws to Charlotte, North Carolina to
6 confront Hells Angels at the Easyrider Bike Expo.
7 Rosga authorized approximately 100 Outlaws to travel to
8 North Carolina -- to Charlotte, North Carolina for that
9 purpose.

10 Based on the collective evidence deduced at trial,
11 the Court finds that the shooting of Hells Angels'
12 member Gary Watson by Michael Pedini and Thomas Mayne
13 was an act committed in furtherance of the conspiracy
14 charged in Count 1, and a part of the criminal
15 enterprise known as the American Outlaws Association.

16 The Court further finds by clear and convincing
17 evidence that Rosga promoted, encouraged, and directed
18 violence against the Hells Angels Motorcycle Club
19 members, and therefore the shooting of Gary Watson was
20 reasonably foreseeable. Therefore, the Court concludes
21 that the evidence clearly and convincingly supports the
22 cross-reference under U.S. Sentencing Guideline 2A2.1,
23 the attempted murder as measured by the standard set
24 forth in *United States v. Pauley*.

25 For those reasons, the objection is overruled.

1 Your exception is noted.

2 Are there any other issues concerning the
3 Guidelines, Ms. Cardwell, you want to bring to my
4 attention this morning?

5 MS. CARDWELL: Other than arguing the other
6 sentencing factors, no, sir.

7 THE COURT: Okay.

8 And you had no objection to the Guidelines?

9 MR. FITZPATRICK: No, Your Honor.

10 THE COURT: Either side have any evidence you want
11 to put on this morning in connection with this hearing?

12 MR. DUFFEY: No, Your Honor.

13 THE COURT: Any evidence, Ms. Cardwell?

14 MS. CARDWELL: No evidence.

15 THE COURT: I have reviewed all the letters that
16 were sent in on Mr. Rosga's behalf, and they've been
17 made a part of the record in the case. Do you want to
18 make them a part of the court's sealed record or a part
19 of the public record?

20 MS. CARDWELL: We have no objection to them being
21 public, Your Honor.

22 THE COURT: They will be. They'll be made a part
23 of the court record.

24 All right, if there are no further objections to
25 the Guidelines, the Guidelines having been properly

1 computed in this case, Mr. Fitzpatrick, I'll hear from
2 you, sir.

3 MR. FITZPATRICK: Thank you, Your Honor.

4 Your Honor, I'm not going to belabor the
5 government's argument. I know the Court has heard two
6 trials in this matter, probably has occupied a month of
7 the Court's docket. We're not going to go much longer
8 than today, Your Honor. I would ask the Court to
9 impose a sentence of 276 months for the following
10 reasons:

11 One, Your Honor, as Your Honor has found, the
12 Guidelines in this case would exceed the statutory
13 maximum sentence. So under the baseline, sort of the
14 benchmark in this case, wherein 324 to 405 months, so
15 the government's statutory maximum is some 48 months
16 below the low end of the Guidelines.

17 More importantly, however, Your Honor, the 3553(a)
18 factors ably and substantially support that sentence.
19 You will look at the first characteristic, the offense
20 and the offender characteristics, the Court heard daily
21 during trial, evidence of violence, actual acts of
22 violence, and then the promotion of violence as the
23 Court noted in its ruling just a minute ago. I called
24 it the celebration of violence.

25 This case has always been driven from the

1 government's side as an issue of safety and public
2 safety. And messages do matter. This organization has
3 a detrimental harm and effect on the public safety of
4 the citizens not only in Virginia, but as the Court has
5 seen across the eastern seaboard into the midwest.
6 You've seen innocent citizens in Virginia, in -- in
7 Minnesota who were witness to some acts of violence
8 against rival clubs. This organization threatens
9 innocent people, not just rival gangs, but innocent
10 people.

11 I would draw the Court's attention again under the
12 3553(a) framework of the assault on Clifford Diggs.
13 And, again, we're not seeking any vulnerable victim or
14 any enhancement like that. But as a 3553(a) factor,
15 two members of this man's organization just selected a
16 person in a bar and decided to send him, and everyone
17 else, a message. That speaks volumes regarding the
18 offense conviction here, and the offender
19 characteristics. It's his organization.

20 Likewise, Your Honor, is that shooting of Curtis
21 Marshall. Again, a very nuance event. Law enforcement
22 early in the morning going to arrest someone, but
23 they're announcing their presence. And a month prior
24 to that, Thomas Mayne, a man in his organization, said
25 first one to the door I'm shooting. Lo and behold, a

1 month later, first one at the door he shoots. That was
2 compelling evidence. That's this organization.

3 Those facts illuminate this organization. That's
4 the -- the light at the top of the Christmas tree.
5 That's what drives them.

6 So, Your Honor, I think that sending the
7 appropriate message in terms of deterrence, respect for
8 the law, if there was ever a case where a substantial
9 sentence would promote the respect for the law, I
10 submit respectfully it would be this one. This is an
11 organization who lacks all respect for the law, so,
12 Your Honor, we ask the Court to impose a 276 month
13 sentence.

14 THE COURT: Thank you, Mr. Fitzpatrick.

15 Ms. Cardwell.

16 MS. CARDWELL: Your Honor, we have addressed the
17 3553(a) factors in our sentencing position. There are
18 two of those factors that I would like to add
19 additional comments to, the first being the 3553(a)(6)
20 factor of the need to avoid unwarranted disparities in
21 sentencing. The government has argued to this Court
22 that this Court should impose a sentence of nearly
23 three times higher than the highest sentence received
24 in this case thus far. Mr. Werth received 110 months,
25 and the government has recommended 276 months for

1 Mr. Rosga, well above the national statutory sentence
2 that the Court is allowed to impose.

3 We have already addressed the similarities between
4 Mr. Werth and Mr. Rosga in our position paper, but it's
5 worth repeating that the government continues to
6 display a pretty transparent attempt to treat Mr. Rosga
7 differently from other defendants and other citizens.

8 For example, in Mr. Fitzpatrick's response, he
9 curiously argues that since the jury in Mr. Werth's
10 case failed to find sufficient proof of an overt act of
11 extortion, it's reasonable for his sentence to be
12 considerably lower than Mr. Rosga's. This argument
13 flies in the face of the very same argument offered by
14 the government in support of why the cross-reference
15 should be adopted in Mr. Rosga's case.

16 When the defense attempted to draw a mitigating
17 argument of the failure of the jury to hold Mr. Rosga
18 responsible for conspiracy to commit murder, the
19 government dismissed that argument as inappropriate and
20 inapplicable, claiming that it had no import in the
21 Court's sentencing decision. It seems the government's
22 eyes and their rules are different for Mr. Rosga.

23 Mr. Werth was a regional president. He was a
24 voting member of the big table. And with all due
25 respect, Your Honor, I don't believe the evidence was

1 that anyone said that Mr. Rosga declared war. The
2 testimony on the tape from Mr. Werth was a question was
3 asked whether it came down from the big table, and
4 there was no answer to that question on the tape.
5 Mr. Rosga's name was never used in that portion of the
6 evidence.

7 Mr. Werth was a part of allegedly that big table
8 meeting, and he was not cross-referenced for any of the
9 other conduct for which he was not charged that
10 occurred in the country that was allegedly related to
11 this declaration of war. He was not cross-referenced
12 for the attempted murder of Gary Watson, which under
13 the foreseeability standard, very well could have
14 applied. Wouldn't that have been an act of furtherance
15 of the declaration of war that the big table declared?

16 The other defendants in this case, and I'm not
17 going to go in too much detail, but if the Court would
18 just consider for a moment -- and I know the Court
19 always goes to great lengths in determining what the
20 appropriate sentence is, and has done so with the
21 previous defendants. Mark Lester, also known as Ivan,
22 was the president of the gray region. He would have
23 been present at that big table meeting of the
24 declaration of war. He was present for a show of
25 force, I think more than one show of force, and he was

1 the one who on tape abducted a Knoxville, Tennessee
2 sheriff. And I didn't hear the tape, but I heard it
3 was pretty ugly. He received 27 months.

4 Mark Fiel, also known as Snuff, was the president,
5 a leader in the organization of the Manassas chapter.
6 He intimidated witnesses to lie to law enforcement. He
7 specifically directed the undercover agents to shoot a
8 specific Hells Angel, and directed how to accomplish it
9 by shooting from the back of a truck, directing that he
10 owned a tattoo parlor, where he was located, and how it
11 might be accomplished. He was not cross-referenced for
12 conspiracy to commit murder.

13 Mr. David Lowry -- and I understand Mr. Lowry of
14 course got a sentence reduction. I don't know what it
15 was, I don't know what the percentage was, and that's
16 something that we have no control over, and is
17 appropriate in certain circumstances. But just looking
18 at the person that he was, he was president of the
19 copper region. He had multiple felonies on his record,
20 from my understanding. He was convicted of -- or pled
21 guilty to the conspiracy, and he had a prior
22 racketeering conviction.

23 Now, assuming that 51 months that he received
24 reflects a significant sentence reduction for his
25 testimony and cooperation, even if he got - and I have

1 to speculate - even if he got a 50% reduction, that
2 would be a 10 year sentence for a second time convict
3 for racketeering.

4 Michael Smith, who never took the stand, but I
5 know the Court is familiar with history and reputation,
6 and frankly I am too because I was prepared to
7 cross-examine him but he never hit the box, but he was
8 a fascinating person. He built bombs and demonstrated
9 them for the undercover agents in this case. He told
10 them how to make these explosives. He was there for
11 the Cockades assault on the Desperados. He sold large
12 quantities of marijuana, and he planned to expand with
13 others, and get others to join. And he received 42
14 months presumably for cooperation. He also got a
15 reduction. But still, that kind of person got 42
16 months.

17 And finally, I've already talked about Mr. Werth,
18 but Michael Pedini. Now, the government has argued
19 that it is not appropriate, and the argument is not
20 available to the defense regarding Mr. Pedini to argue
21 disparity because he was a cooperating individual, but
22 the case law - and I've already noted that and
23 addressed that in our reply to the government's
24 response - is not applicable under these circumstances.
25 The argument that we're making is that ultimately in a

1 sentence that this Court imposes, and the discretion
2 that this Court exercises, the disparity should not be
3 so great between the actual shooter who almost killed a
4 man, who ambushed a person that only he apparently
5 knew, would be that much lower than the person who
6 allegedly told him to do it. His sentence was 63
7 months for Counts 1 and 2. And again, even if that
8 reflects a 50% reduction, that would mean that his
9 starting sentence was approximately 10 years. And I
10 can only speculate on that.

11 THE COURT: You know, Ms. Cardwell, I'm not privy,
12 and maybe you are, to what the Court's rationale was in
13 Maine. Do you know what the sentencing judge
14 articulated as his or her rationale?

15 MS. CARDWELL: I don't know that.

16 THE COURT: That makes it difficult for me to
17 weigh the two.

18 MS. CARDWELL: I understand that, Judge. From
19 what we could get, and everything was sealed, all I can
20 tell is there was a 5K motion at the time of
21 sentencing, so he has received his reduction. And I
22 have to assume it was based upon his cooperation and
23 testimony in this case.

24 But I think it's a very valid point that a 50%
25 reduction is a reasonable thing that should happen for

1 someone who actually testifies in a case. And if it
2 was 50%, he started with a 10-year sentence, and he was
3 the shooter in this cross-reference attempted murder.

4 So based upon those arguments, Your Honor, I would
5 ask the Court to give great consideration to that
6 particular factor because it is such an important one
7 among the defendants in this case, and among other
8 similarly situated defendants across the country.

9 I'd like to move on to the 3553(a)(1) factor of
10 the characteristic of the defendant, Mr. Rosga. The
11 Court heard the testimony of numerous witnesses who
12 came from Milwaukee and Florida and testified about
13 Mr. Rosga's character and his conduct. And you heard,
14 and the jury heard, from Eric Roberson, a retired
15 Milwaukee County Sheriff. He described Mr. Rosga as a
16 trusted friend. He'd been in law enforcement for any
17 number of years, worked with him, trusted him, ate at
18 his house, and had nothing but positive things to say
19 about the way Mr. Rosga has led his life.

20 You heard from Henry Miller, also known as Uncle
21 Hanka, who was brother of Mr. Rosga's deceased wife.
22 He described him as hardworking, honest, reliable,
23 peaceful, and a dedicated family man.

24 Tony San Filippo was a motorcycle club activist
25 who was doing wonderfully positive things in the

1 community of Milwaukee, and at any turn could get Mr.
2 Rosga's help in accomplishing those things, including
3 helping law enforcement learn how to deal with
4 motorcycle club culture.

5 Mr. Dixon was a local business owner and had
6 business dealings with Mr. Rosga, and said he also paid
7 his rent on time. He was a completely reliable person
8 and a wonderful friend to him.

9 And then finally, this Court heard from A.J. Ford
10 who was a well-known retired Richmond detective who
11 worked narcotics and all sorts of vice cases for many
12 years for the City of Richmond. And he came from
13 Florida to testify on behalf of Mr. Rosga attesting to
14 his character, attesting to his intolerance for drug
15 use, and his overall good character as a person.

16 I'd ask the Court to recall those people, and the
17 effort they went to bring before this Court the
18 information that they know about Jack Rosga. In
19 cross-examining those witnesses, the government's
20 approach was to imply that there were two Jack
21 Rosga's - the hardworking trucker who loved his family
22 and friends, and went out of his way to help his
23 community, and then the one who was the president of
24 the Outlaws.

25 To the extent that this Court or the jury believed

1 that there are two different people, the regular Jack
2 Rosga and the Outlaw Jack Rosga, there's only one man
3 here today to be sentenced. And you must,
4 respectfully, Your Honor, fashion a sentence that
5 addresses that whole person. You will sentence one man
6 today, the man who so loved and supported his family;
7 the man who built a business after many, many years of
8 hard labor; the man who has served his community and
9 friends so selflessly and consistently that they'll
10 miss him every day of the sentence that you give him.

11 Respectfully, what you don't know about Mr. Rosga,
12 Your Honor, from the government's case is that he's a
13 funny, good-natured person, he's a big-hearted person,
14 he's generous, and he's an enormously faithful human
15 being. Mr. Rosga has no criminal history.

16 Since the date of his arrest and detention, you've
17 not heard that he's given the folks at the regional
18 jail a moment's problem. He's conducted himself in and
19 out of this courtroom through two jury trials since
20 this case started in the same peaceful and respectful
21 manner he has lived his entire life, and I ask you to
22 recognize that in the sentence.

23 The government's gone to great lengths in
24 approaching this case, and its pleadings to convince
25 the Court that the Guidelines should be elevated as

1 high as possible, applying the cross-reference, and
2 insisting that Mr. Rosga deserves the maximum sentence
3 in this case.

4 I read a quote from a former chief judge of the
5 U.S. Supreme Court this week, and it was that "*It is*
6 *not the letter of the law, but the spirit of the law,*
7 *that leads to justice.*" Even if this Court rules that
8 the cross-reference applies, and you have, and
9 Mr. Rosga's guidelines exceed the maximum statutory
10 sentence, you should impose a sentence in line with the
11 other defendants in this case in the spirit of justice.

12 Mr. Rosga's a very proud man and he does not want
13 me to beg for him, but if I knew or believed it would
14 get him a logical and just sentence in light of all the
15 sentences thus far imposed, I would do that for him.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Cardwell.

18 All right, Mr. Rosga, if you would come forward,
19 sir, with your attorneys.

20 Mr. Rosga, obviously I have heard all the evidence
21 in this case on two occasions. I have also heard many
22 folks testify on your behalf, and I've reviewed the
23 stack of letters that Ms. Cardwell and Mr. Mastantuono
24 filed from friends and relatives or yours. All that is
25 being factored in. I think the sentencing process is

1 weighing everything in the case, and I do so in
2 opposing sentence this morning. But first I'd like to
3 hear from you. Is there anything you'd like to tell
4 me, sir, before I decide what sentence is appropriate?

5 MR. ROSGA: I really have nothing to say, Your
6 Honor.

7 THE COURT: All right.

8 Well, Mr. Rosga, the reason your sentencing
9 category is slightly different from the others is that
10 you were the president of this organization. And as
11 such, you were kind of over the years the architect of
12 the culture of violence that many chapters of the
13 American Outlaw Association had. In addition, like
14 many people who are kind of at the apex of criminal
15 networks, you did not personally participate in a lot
16 of violent activity, but you counseled your
17 subordinates to do so.

18 And in this case, I found very clearly that you
19 declared war on the Hells Angels, that you suggested
20 violent retaliatory actions, and that other members of
21 that organization spread that message down to the
22 chapters and individuals. And it's for that, sir,
23 you're being held accountable today.

24 Mr. Rosga, I've reviewed the U.S. Sentencing
25 Guidelines as advisory only, and I've considered all

1 the factors set forth in 18, United States Code,
2 Section 3553(a). And I look to the nature and scope of
3 the organization, what it was all about and your role.
4 I look at what type of sentence would promote respect
5 for the law, provide for deterrence, and protect the
6 community. In having done so, this Court believes that
7 a sentence that is adequate, but not longer than
8 necessary, would be commitment to the U.S. Bureau of
9 Prisons for a term of 240 months. That will consist of
10 240 months on Count 1, and 36 months on Count 2.

11 I am going to run the time on Count 2 concurrent
12 with the time on Count 1. And the reason I'm doing
13 that is two-fold. First of all, you have no prior
14 record. And secondly, I do give credit to those people
15 who have come forward and spoken about the positive
16 side of you. It's an important factor for me to
17 consider, and I do so. Even though I have the
18 authority to impose 36 months of consecutive
19 incarceration, I think that the positive side of you
20 merits some consideration, and I do so. So I oppose
21 that 36 months concurrent.

22 Upon your release from confinement, you will be
23 placed on supervised release for a term of three years.
24 That will consist of three years on each count. Those
25 periods of supervision will be served concurrently.

1 Within 72 hours of your release from the Bureau of
2 Prisons wherever you may be, you will be required to
3 report to the probation office in that district. Your
4 supervised release begins at that time. It is for
5 three years. The U.S. probation officer will go over
6 with you in detail all the terms and conditions of
7 supervised release. And you will sign that form, and
8 you will be required to strictly abide by it.

9 While you're on supervised release, you may not
10 violate any federal, state, or local law. You can't
11 have in your possession any kind of firearm or
12 dangerous destructive device, nor any kind of narcotic
13 drug or controlled substances without a valid
14 prescription issued by a licensed doctor.

15 Now, at the inception of your supervised release,
16 if the U.S. probation officer feels that any special
17 conditions are necessary, he or she can apply to this
18 Court to modify the judgment and commitment order to
19 reflect those. And I will consider them, and amend the
20 commitment order if necessary.

21 I've reviewed your net worth, your earning
22 capacity, and the sentence you're receiving. I don't
23 think that you're capable of paying a fine. I further
24 find that no fine is appropriate in this case, but you
25 are required by law to pay a special assessment of \$100

1 on each count, which I do impose for a total of \$200.

2 Your special assessment is due and payable today.

3 If it's not paid by the time you complete your period
4 of confinement, it will be paid as a special condition
5 of your supervised release in an amount of not less
6 than \$25 per month beginning 60 days after your
7 supervised release begins until it is paid in full.

8 Any forfeiture order previously entered in this
9 case will become a part of the final judgment and
10 commitment order.

11 Now, Mr. Rosga, during the course of this case,
12 this Court has made many, many decisions, and you have
13 a right to appeal all the decisions I have made in this
14 case, including the sentence you've received, to the
15 U.S. Court of Appeals for the Fourth Circuit. If you
16 wish to appeal, that appeal must be noted within 14
17 days of today. So I suggest that you immediately begin
18 consulting with your attorneys to decide whether you
19 wish to appeal because if you wish to do so, they must
20 put that process in motion immediately.

21 Mr. Fitzpatrick, the original indictment in this
22 case, is there a motion to dismiss?

23 MR. FITZPATRICK: Yes, Your Honor. I'll make it
24 orally. I don't have an order.

25 THE COURT: That's okay. Your oral motion will be

1 fine. That motion will be granted.

2 Ms. Cardwell and Mr. Mastantuono, is there
3 anything further this morning?

4 MS. CARDWELL: No, sir.

5 MR. MASTANTUONO: No, sir.

6 THE COURT: Anything further today,
7 Mr. Fitzpatrick?

8 MR. FITZPATRICK: No, sir.

9 THE COURT: All right.

10 Mr. Rosga, you're remanded to the custody of the
11 United States Marshal to serve your sentence, sir.

12 This Court will stand in recess.

13 (The proceeding concluded at 10:17 a.m.)

14 REPORTER'S CERTIFICATE

15 I, Krista M. Liscio, OCR, RMR, Notary
16 Public in and for the Commonwealth of Virginia at
large, and whose commission expires March 31, 2012,
17 Notary Registration Number 149462, do hereby certify
that the pages contained herein accurately reflect
the notes taken by me, to the best of my ability, in
the above-styled action.

18 Given under my hand this 3rd day of October, 2011.

19 _____
20 Krista M. Liscio, RMR
21 Official Court Reporter
22
23
24
25